

WATER COUNCIL MEETING

NH Dept. of Environmental Services
29 Hazen Dr., Concord, N.H.

July 10, 2013
9:00 a.m.

Members present: Chairman Gilbert, Councilors Henderson, Hinds, O'Brien, Rastallis, and Varotsis

Members absent: Councilors Butler, Gosse, Lyons, and Rawnsley

Also present were Paula Scott, Appeals Clerk and Carolyn Guerdet, Council Clerk

Chairman Gilbert called the meeting to order at 9:00 a.m.

1. Approval of Minutes of the June 12, 2013 Meeting

- ***Motion made by Councilor Varotsis to approve the minutes with an addition, second by Councilor Hinds. Motion passed unanimously.***

2. Status of Appeals

Appeals Clerk, Paula Scott, presented an update on the following appeals:

I. New Appeals

II. Decision and Orders that need to be written finalized and issued.

III. Hearings or PHCs Pending

Dockets No. 12-01 WC – David Sundman, et al.

Re: 12/19/11 Alteration of Terrain Permit No. AoT-0353 for Dalton Valley Drag

Hearing Officer: David Conley assigned on 2/9/12

Status: Received appeal that appears to be timely on January 18, 2012. Issued receipt of appeal letter on January 20, 2012. Council accepted the appeal Feb. 8, 2012, notice was issued Feb.9, 2012. Pre-Hearing Conference (PHC) is scheduled for Apr. 16, 2012 at 1 p.m., notice sent 3/13/12. Mar. 20, 2012 received Motion to Continue PHC. Mar. 26, 2012, Motion was granted. Rescheduled PHC for May 2, 2012 at 9 a.m. At the Council's 4/11/12 meeting, the Council voted to consolidate appeal Docket Nos. 09-05 WC – North Country Alliance for Balanced Changed and 12-01 WC David Sundman, et al. Notice of the consolidated appeals and PHC were issued April 12, 2012. PHC was held on 5/2/12, a second PHC is scheduled for Aug. 27, 2012 @ 9 a.m., and a hearing is scheduled for Sept. 12, 2012 @ 10 a.m. Notice given 5/2/12 via PHO. August 8, 2012 the Water Council requested that the hearing scheduled for September 12, 2012 to begin at 8:30 a.m. instead. 8/23/12 received Appellant's Partially Assented-To Motion to Continue Hearing and PHC; Appellant North Country ABC's Motion for Partial Summary Judgment; and Appellant North Country's ABC's Memorandum in Support of Motion for Partial Summary Judgment. 8/27/12 received Stipulation to Dismissal of Appeal of Permit WPS-8289A. 8/30/12 Order regarding Dismissal of Appeal by agreement was issued. In accordance with the dismissal, Docket No. 09-05 WC Dalton Valley Drag, LLC is withdrawn from the Council's docket. September 4, 2012 received Status Update from the Department regarding Docket No.12-01 WC. The license action is under Reconsideration.

Docket No. 13-01 WC – Edward and Robin Monty

RE: 12/05/12 Subsurface construction Approval No. 2012111282 issued to Hanna E. Perutz, Trustess

Hearing Officer: David Conley, Esq. assigned on 2/13/13

Recused Member: Deborah Hinds

Status: January 3, 2013 received Notice of Appeal. 1/4/13 issued receipt of appeal letter. 1/28/13 received Motion to Dismiss from permittee. February 7, 2013 received Objection to Motion to Dismiss. Council accepted the appeal on 2/13/13 and appeal acceptance letter issued on 2/14/13. 2/26/13 received letter from permittee. 2/28/13 received appearance from Robert Murphy, Jr. for the permittee. March 13, 2013 received appearance from Richard de Seve for DES. April 10, 2013 issued Order on Motion to Dismiss which was denied. 4/11/13 sent Notice of Pre-hearing Conference schedule for May 13, 2013. 5/8/13 sent Notice of Unexpected Conflict, Hearing Officer unable to attend scheduled PHC via email. 5/9/13 sent Notice of Rescheduled PHC, scheduled for 5/17/13. Pre-Hearing Order(PHO) issued on 5/17/13 continuing the PHC. 6/5/13 received DES' Motion to Stay. Hearing Officer to rule on this. June 13, 2013 received Objection to Motion to Stay and Assented-to Motion to Stay. 6/14/13 issued ruling on Motion to Stay, which was granted.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal**Docket No. 11-05 WC – Town of Hooksett and Hooksett Sewer Commission**

RE: 3/21/11 Administrative Order, Administrative Order No. 11-010 WD

Presiding Officer: Not Assigned

Recused: Christopher Rawnsley

Status: On May 11, 2011 the Council voted unanimously to accept appeal. The Town and DES continue to be engaged in discussion to resolve this matter. Both the Town and DES request that the Council continue to delay taking action on the Notice of Appeal. Sent request for status on June 14, 2012 asking for a response by July 11, 2012. June 22, 2012 received status report from appellant. Currently efforts are under way to implement a solution to the problems experienced that led to the issuance of the Administrative Order. October 17, 2012 sent request for status asking for a response by November 14, 2012. November 14, 2012 received status report. They are continuing to implement a solution to the problems experienced that led to the issuance of the Administrative Order(AO). March 14, 2013 issued request for updated status report. Received a message from Appellant's attorney that the Department was closing this matter. April 16, 2013 the Department issued Notice of Closure for the AO. A message was left by Appeals Clerk for Attorney Peltonen but no response has been received. July 3, 2013 received a letter from Atty. Peltonen stating no further action on the pending appeal is necessary. It was asked that the Appeals Clerk send a confirmation as to removing it from the Council's docket.

Docket No. 12-19 WC – Cities of Rochester, Dover and Portsmouth, NH

RE: 11/5/12 Certification of NPDES Permit No. NH0100196 issued to the Town of Newmarket(PNA filed 12/5/12)

Hearing Officer: David Conley, Esq. assigned on 2/13/13

Status: January 18, 2013 received Notice of Appeal. 1/25/13 issued receipt of appeal letter. February 4, 2013 received Appearance for Atty. Evan Mulholland. 2/8/13 received Joint Motion to Continue. Council accepted Appeal and granted Joint Motion to Continue on 2/13/13 with Notice issued on the same date. No action required until final disposition of United State Environmental Appeals Board (EAB) and Federal Court.

Docket No. 12-20 WC – Cities of Rochester, Dover and Portsmouth, NH

RE: 11/5/12 Certification of NPDES Permit No. NH0100871 issued to the Town of Exeter(PNA filed 12/5/12)

Hearing Officer: David Conley, Esq. assigned on 2/13/13

Status: January 18, 2013 received Notice of Appeal. 1/25/13 issued receipt of appeal letter. February 4, 2013 received Appearance for Atty. Evan Mulholland. 2/7/13 received Joint Motion to Continue. Council to accept or decline appeal. Council accepted Appeal and granted Joint Motion to Continue on 2/13/13 with Notice issued on the same date. No action required until final disposition of United State Environmental Appeals Board (EAB) and Federal Court.

4. Old Business

- a. Review of Draft Rules Env – Dw 100 - 200 Definitions and Procedures for Drinking Water Rules

Holly Green and Selina Makofsky, Drinking Water Ground Water (DWGW) Bureau
Selina gave a review of what is being changed. These are generic definitions.

- b. Review of Draft Rules Env –Dw 701, 718, and 721-723 Definitions, Recordkeeping, Exemptions, Best Available Technology and Non-Central Treatment for Public Water Systems

Holly Green and Selina Makofsky, Drinking Water Ground Water (DWGW) Bureau
Definitions updated, other rule updates to match federal requirements, and clarification.

These both are still being reviewed by the legal department. Questions and comments by the Council were addressed.

Council's input is to be considered an assent to the rules.

- d. Review of Draft Rules Env-Dw 2101 Water Conservation Rules

Derek Bennett and Debra Sonderegger, Drinking Water Ground Water (DWGW) Bureau

Scope & intent have not been changed. Clarified intent and eliminated redundancy. These only apply to new sources of water. A public hearing was held on June 18. Questions by the Council were addressed. Revisions from the public hearing will be distributed to the Council.

Council's input is to be considered an assent to the rules.

- c. Review of Draft Rules Env-Dw 902 Rules for Protecting the Purity of Regulated Waters

Holly Green and Paul Susca, Drinking Water Ground Water (DWGW) Bureau
These rules & changes will be discussed further at the next meeting.

3. New Business

- a. Draft Rules Env- 100,200,300 Dam Rules

Kent Finemore, Dam Bureau

Review of the rules changes was noted. A larger rule change will be in the future.

The Council gave its advice on these rules and the Department is encouraged to proceed.

5. Other Business

Water Council Member Rules are to be distributed to the Council members.

6. Next Meeting

August 14, 2013 at 9:00 a.m.

7. Adjournment

- ***Councilor Varotsis made a motion to adjourn, second by Councilor Hinds. Motion passed unanimously.***

Meeting was adjourned at 10:00 a.m.